

**EXHIBIT 10**

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 [ 4] IN THE UNITED STATES DISTRICT COURT  
 [ 5] FOR THE  
 [ 6] DISTRICT OF MASSACHUSETTS  
 [ 7]  
 [ 8] MARLENE JOHANSEN, )  
 [ 9] Plaintiff, )  
 Counterclaim Defendant, )  
 [10] ) Case No. 04-11789-RCL  
 V. )  
 [11] )  
 UNITED STATES OF AMERICA, )  
 [12] Defendant, )  
 Counterclaim Plaintiff, )  
 [13] )  
 V. )  
 [14] )  
 NATIONAL CITY MORTGAGE CO., )  
 [15] and TIMOTHY BURKE, )  
 Counterclaim Defendants. )  
 [16]  
 [17]  
 [18] THE ORAL DEPOSITION OF RALPH JOHANSEN, held  
 [19] pursuant to Notice, and the applicable provisions of the  
 [20] Federal Rules of Civil Procedure, before Marilyn Franklin, a  
 [21] Court Reporter and Notary Public, within and for the  
 [22] Commonwealth of Massachusetts, at the offices of  
 [23] Meilman and Costa, P.C., 70 Wells Avenue, Suite 200,  
 [24] Newton, Massachusetts, on Friday, May 27, 2005,  
 [25] commencing at 10:00 a.m.

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[ 1] PRESENT:  
 [ 2] On Behalf of the United States of America:  
 [ 3] STEPHEN J. TURANCHIK, Trial Attorney, Tax Division  
 United States Department of Justice  
 [ 4] P.O. Box 55/Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 307-6565  
 [ 5]  
 [ 6] On Behalf of the Witness:  
 [ 7] D. SEAN McMAHON, ESQ.  
 Meilman & Costa  
 [ 8] 70 Wells Avenue, Suite 200  
 Newton, MA 02459  
 [ 9]  
 On Behalf of Marlene Johansen:  
 [10] TIMOTHY J. BURKE, ESQ.  
 [11] Timothy J. Burke & Associates  
 400 Washington Street, Suite 303  
 Braintree, MA 02184  
 [12]  
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[1] Q Let me have you turn back to Exhibit 6 for a minute,  
 [2] which is the judgment of divorce nisi.  
 [3] At some point in time, do you know if an appeal [4] was made  
 of that judgment?  
 [5] A Yes.  
 [6] Q And do you know who appealed it?  
 [7] A Marlene.  
 [8] Q Do you know why she appealed it?  
 [9] A She wanted the house.  
 [10] Q Did you ever appeal the judgment?  
 [11] A No.  
 [12] (Johansen Deposition Exhibit [13] Ralph-8 marked.)  
 [14] Q BY MR. TURANCHIK: I show you what's marked as  
 [15] Government Exhibit 8 -- sorry, Ralph Exhibit 8.  
 [16] And, actually, I'm going to hold off asking [17] questions on  
 this. I should have marked them in [18] reverse order.  
 [19] MR. TURANCHIK: Let's mark that as 9.  
 [20] (Johansen Deposition Exhibit [21] Ralph-9 marked.)  
 [22] Q BY MR. TURANCHIK: I show you what's marked as  
 Ralph-9 [23] and it is a copy of Appellee Ralph Johansen's  
 [24] opposition to appellant Marlene Johansen's motion for  
 [25] stay of divorce judgment.

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[1] First, have you ever seen this document before?  
 [2] A I may have. I don't know.  
 [3] Q All right. If you can turn with me to -- it's actually [4] the  
 second and third pages of this exhibit, but it's [5] labeled Pages 4  
 and 5. I don't seem to have Pages 2 [6] and 3.  
 [7] The Paragraph 3, which is on the bottom of [8] Page4---  
 [9] MR. McMAHON: Is marked as 4.  
 [10] MR. TURANCHIK: Thank you. But is marked as [11] Page4.  
 [12] Q BY MR. TURANCHIK: --- has underlined as its title:  
 [13] Marlene's benefit from their failure to file tax [14] returns.  
 [15] And if you then turn to the third page of this [16] exhibit, there  
 are a list of amounts that you have [17] provided to Marlene during  
 the years '95 through 2000. [18] And I don't have a copy of the  
 chalk that is referred [19] to here. Can you describe for me what  
 took place in [20] the divorce trial regarding the chalk that was put  
 on [21] the bulletin, on the board?  
 [22] A Phyllis asked me to go back and provide documents,  
 [23] checks of what. So we had to photocopy both front and  
 [24] back, and quite extensive, for each year, my payments [25] to  
 Marlene for -- I got paid twice a month, so each

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[1] month, the amount of the payments. Then anything else  
 [2] during this time frame that I was paying. Marlene [3] starting  
 sending me the bills. Rather than confront [4] her, I just paid them.  
 [5] Q Now, when did that happen? Was that after your  
 [6] separation?  
 [7] A Yes.  
 [8] Q What type of expenses did you pay Marlene's expenses  
 [9] for following your separation?  
 [10] A There were a whole series of things that -- initially,  
 [11] before the trial, there was a court order, I was paying  
 [12] \$515 a week.  
 [13] Q Mm-hm.  
 [14] A I paid household things that came up. We needed a new  
 [15] porch on the other side, so I ended up paying for that  
 [16] work to be done. I paid some of the oil bills. She [17] claimed  
 that she didn't have enough money to heat the [18] house and that  
 the pipes would break, so.  
 [19] I went through a whole series of things, but what [20] I did is I  
 documented them and put them all on, you [21] know,  
 photocopies to everything, so that ---  
 [22] Q Now you were separated in 1997, and I'd like to just  
 [23] focus on the payment in '98, '99 and 2000.  
 [24] A Mm-hm.  
 [25] Q I see that there were \$60,000 to Marlene from Ralph's

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[1] total income is listed here. The 60,000 -- does the [2] \$60,000  
 include the 515 per week you -- or per month [3] you were paying?  
 [4] MR. McMAHON: Per week.  
 [5] Q BY MR. TURANCHIK: It was 515 per week, right?  
 [6] A Yes.  
 [7] Q Does the \$60,000 include the 5 ---  
 [8] MR. McMAHON: No, you said.  
 [9] THE WITNESS: Oh, yeah.  
 [10] Q BY MR. TURANCHIK: Does the \$60,000 include the 515  
 per [11] week?  
 [12] A I believe so.  
 [13] Q In '98, if you were paying 515 per week, that's \$26,000  
 [14] or so. Did you pay another \$33,000 on other expenses [15] to  
 Marlene?  
 [16] A I'm ---  
 [17] Q I'm sorry?  
 [18] A I'm -- sorry. When we were first separated ---  
 [19] Q Mm-hm.  
 [20] A --- I kept paying her the same amount. It wasn't till  
 [21] later, when the initial thing came out, I don't [22] remember  
 which year it was that I was ordered to pay [23] the 515 -- oh, here  
 it is. In 1999.  
 [24] Q All right.  
 [25] A So in '98, I was still.

[1] Q And so in '98, that \$60,000 went to pay for the oil [2] bills and the, I guess, electricity and the mortgage [3] payments and the real estate taxes?

[4] A The reality was that it was going to pay credit cards. [5] Marlene had opened accounts in Bloomingdale's, women's [6] clothing that I didn't even know what they were, all [7] sorts of different stores. And one of the things, she [8] opened up an account sometime in what's called QVC, [9] home shopping channel. It wasn't until that I was [10] separated, that I knew the extent of what was in my [11] name, and the credit card companies wouldn't let me [12] take my name off the accounts unless it was zero [13] balance.

[14] Q And were these amounts incurred after your separation?

[15] A There was a -- some were, some weren't. I mean, the [16] cards -- as near as I can piece together, Marlene, when [17] a monthly payment was due, would pay like just the [18] minimum.

[19] Q Mm-hm.

[20] A So it's like the interest just kept getting larger and [21] larger.

[22] Q The judgment of divorce nisi, the Court had ordered [23] that the house be sold to pay the tax liabilities. Did [24] you think that was a fair result?

[25] A Yes.

[1] Q And why did you think that was a fair result?

[2] A Because I thought both of us were liable for -- I mean, [3] I assumed responsibility for it. Partly, I couldn't [4] deal with confronting Marlene any more.

[5] Q Well, you said both of you were liable. Is it that you [6] considered both of yourselves liable for the taxes or [7] that both of you benefitted from your earnings during [8] those years?

[9] A A combination of both, but we certainly -- I mean, we [10] lived a lifestyle that -- it was certainly not [11] extravagant, but it was -- you know, it was [12] comfortable, we had a house and we each had a car.

[13] MR. McMAHON: If I could just clarify?

[14] When you say you thought that both of us were [15] liable, you weren't speaking to a legal obligation, but [16] rather who was, in fact, responsible for creating [17] liability?

[18] THE WITNESS: Yes. Yes.

[19] MR. McMAHON: Thank you.

[20] Q BY MR. TURANCHIK: Now let me have you turn to [21] Exhibit 8. And I will represent to you this is a [22] modification judgment dated December 24th, 2001, and [23] also attached to this exhibit, Pages 3 and 4 of it, are [24] -- is an agreement entered into between yourself and [25] your wife, also dated December 24th, 2001.

[1] First, have you seen these documents before?

[2] A Yes.

[3] Q And when did you first see these?

[4] A I first saw the handwritten portion when it was being [5] written on the 24th of December.

[6] Q Can you explain to me the circumstances surrounding the [7] drafting of the handwritten portion of this document?

[8] A When the first decision came down, Phyllis and Barry [9] Connelly, her lawyer, attempted to bring the real [10] estate agent to actually see the house. Marlene [11] totally freaked out, would not let them in the house. [12] I don't know, Phyllis was offended by the way it went [13] down.

[14] Q Mm-hm.

[15] A When Marlene decided -- she said that she was never [16] giving up the house.

[17] Q Mm-hm.

[18] A She then filed an appeal. At that time I had not been [19] allowed to get into the house. I never got any of my [20] possessions out of the house.

[21] Q Let me focus more on the ---

[22] A Yeah.

[23] Q --- on the date. Following the appeal ---

[24] A Yes.

[25] Q --- were there negotiations to settle the matter

[1] without going through the whole process of an appeal?

[2] A My lawyer advised me that to fight the appeal, she [3] would have to do a brief, that it would take an [4] extended amount of time, she didn't know how long, [5] based on how busy the courts were, and that it'd be [6] fairly expensive.

[7] Q My question was whether negotiations that took place [8] regarding resolving the matter, without having to go to [9] an appeal?

[10] Do you understand my question?

[11] A No.

[12] Q Okay.

[13] A Sorry.

[14] MR. McMAHON: Would you say that, if you don't [15] understand?

[16] Q BY MR. TURANCHIK: At some point in time this agreement [17] was reached. You have an agreement between two [18] different parties?

[19] A Yes.

[20] Q Now oftentimes when an agreement is being reached or [21] before an agreement is reached, the parties will [22] negotiate. They will say, I want this term or I want [23] that term. Was there a negotiation that took place [24] prior to this agreement being reached?

[25] MR. McMAHON: I'm going to object to the

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[1] characterization of it as an agreement. Proposed [2] judgment?

[3] MR. TURANCHIK: I wouldn't have a problem with [4] that, except the language on the document says [5] agreement of parties, and it says: It is hereby [6] agreed.

[7] MR. McMAHON: That it shall be made a judgment of [8] this Court.

[9] MR. TURANCHIK: Yeah, but ---

[10] MR. McMAHON: The document speaks for itself. I [11] just want to note the objection to the characterization [12] as an agreement due to the government's position in the [13] case.

[14] MR. TURANCHIK: Fair enough.

[15] Q BY MR. TURANCHIK: Mr. Johansen, prior ---

[16] A Yes.

[17] Q --- prior to this document being written and signed ---

[18] A Yes.

[19] Q --- were there negotiations between the parties?

[20] Or their lawyers?

[21] A The lawyers.

[22] Q And certainly even within ---

[23] MR. McMAHON: And the lawyers were discussing --

[24] just for clarity -- are the divorce lawyers.

[25] MR. TURANCHIK: Yes.

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[1] THE WITNESS: I'm sorry. The divorce lawyers were

[2] trying to work something out and the bottom line was

[3] Marlene wanted the house.

[4] Q BY MR. TURANCHIK: Do you know if the discussions

[5] between the lawyers took place in one day, over a [6] course of weeks or do you know how, how the negotiation [7] worked?

[8] A I don't know the answer to that. I know there were

[9] discussions.

[10] Q Mm-hm.

[11] A I don't know the length of time it took them to do

[12] that. When we went to court, it was for contempt.

[13] Q Mm-hm.

[14] A I had signed off on -- I had filed for the IRA to be

[15] split.

[16] Q Mm-hm.

[17] A I took that step. The pension plan hadn't been signed

[18] off on yet. My lawyer told me that, basically, that if [19] you sign that off and she refuses to get out of the [20] house, you've got absolutely nothing.

[21] Q By the pension plan being signed off on, what do you

[22] mean by that?

[23] A Whatever forms needed to be filled out to ---

[24] Q By that, do you mean that 50 percent of your pension

[25] benefits would go to Marlene in the future?

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[1] A Yes.

[2] Q Okay. If you were to die -- I'm asking your

[3] understanding.

[4] If you were to die prior to your pension being [5] payable to you, what would have happened -- let me back [6] up even further.

[7] If you were to die, God forbid, between now and [8] your pension paying out, what happens to those [9] payments?

[10] MR. McMAHON: As it is today?

[11] MR. TURANCHIK: As it is today.

[12] A As it is today, it goes to my current wife.

[13] Q BY MR. TURANCHIK: It would not go into your estate, it

[14] would go to the named beneficiary?

[15] A Yes.

[16] Q All right. While you were married to Marlene, if you

[17] died before your pension was payable, where would the

[18] pension payments go?

[19] A It would have gone to her.

[20] Q To Marlene?

[21] A Yes. I'm sorry.

[22] Q Now as part of the judgment of divorce nisi, would half

[23] of your pension payments have gone to your wife,

[24] Marlene, regardless?

[25] MR. McMAHON: Regardless of?

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[1] MR. TURANCHIK: Oh, let me back up.

[2] Q BY MR. TURANCHIK: Actually, you know, the document

[3] speaks for itself.

[4] MR. McMAHON: Paragraph 9?

[5] MR. TURANCHIK: Thank you.

[6] Q BY MR. TURANCHIK: Mr. Johansen, if you'd turn with me

[7] to Exhibit No. 6, the judgment of divorce nisi?

[8] A Mm-hm.

[9] Q Paragraph 9 states, and I believe you are the defendant

[10] in counterclaim, that: Ralph Johansen shall cause to [11] be prepared a qualified domestic relations order or [12] other appropriate document as required by the Canadian

[13] Government to equally the coverture portion of the [14] Ralph Johansen's defined benefit pension plan as of the [15] date of trial.

[16] Additionally, Ralph Johansen shall elect the joint [17] and survivor annuity option under said pension plan.

[18] Is the paperwork you're talking about, electing [19] the joint and survivor annuity option?

[20] A No, it's this whole thing, this qualified domestic

[21] relations order.

[22] Q Do you know if a qualified domestic relations order was

[23] ever entered in your divorce?

[24] MR. McMAHON: In regards to the pension?

[25] Q BY MR. TURANCHIK: With regards to the pen -- actually,

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[1] with regard to the pension, first, do you know if a [2] qualified domestic relations order was entered in [3] your divorce with regard to your pension fund?

[4] A I don't believe so.

[5] Q Okay.

[6] A I don't know for a fact.

[7] Q Okay. Do you know if any qualified domestic relations [8] order were entered into at any time with regard to [9] anything in your divorce?

[10] A I don't know.

[11] Q Okay.

[12] A I'm sorry.

[13] Q I notice on Exhibit 8, the handwritten pages ---

[14] A Yeah.

[15] Q --- that the signatures appear to all take place on [16] December 24th, 2001?

[17] A Yes.

[18] Q Did those happen at the courthouse?

[19] A Yes.

[20] Q And I also happen to notice that the modification of [21] judgment, the first two pages of this document, are [22] dated December 24th, 2001?

[23] Look at the bottom.

[24] A Yes.

[25] Q Did the parties take this, the handwritten pages, into

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[1] the Court and ask the Court to endorse that on the same [2] day? If you know?

[3] A I -- they brought it to the Judge. I don't know what [4] -- I presume that's -- I don't know what they ---

[5] Q Okay. That's fair enough.

[6] MR. McMAHON: Off the record for a second?

[7] MR. TURANCHIK: Odd the record.

[8] (Off the record at 11:16 a.m. to 11:32 a.m.)

[9] MR. TURANCHIK: We're back on the record.

[10] Q BY MR. TURANCHIK: And I had a question. You had [11] mentioned earlier that after you had moved out, there [12] were a number of possessions left in the house. And [13] it's my understanding that you have not seen those [14] possessions again.

[15] A No.

[16] Q What possessions have you not seen again that were left [17] in the house?

[18] A I have not seen any of my personal effects, my [19] pictures, any family personal things that have been [20] passed down, my fishing gear, I'm a fly fisherman. [21] Please don't laugh, but my beer can collection.

[22] Q Anything else?

[23] A And all my clothes.

[24] Q All right.

[25] MR. TURANCHIK: Let's mark this as 10.

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[1] (Johansen Deposition Exhibit [2] Ralph-10 marked.)

[3] MR. TURANCHIK: Thank you.

[4] Q BY MR. TURANCHIK: Mr. Johansen, I show you what's [5] marked as Exhibit 10 and ask you to take a look at it.

[6] (Pause.)

[7] Q And I will represent to you that this is a Form 656, an [8] offer in compromise, as well as a Form 433A, which is a [9] collection information statement for individuals. And [10] these two items are routinely submitted to the IRS as [11] part of making an offer in compromise.

[12] If you would turn to the fourth page of this [13] exhibit. Is that your signature that appears on the [14] bottom of the page?

[15] A Yes.

[16] Q And it's dated October 16th, 2001. Do you remember [17] signing this on October 16th, 2001?

[18] A I remember signing it.

[19] Q Okay. Let me have you turn to the third-to-last page [20] of the exhibit. Is that your signature that appears on [21] this page?

[22] A Yes.

[23] Q What I'd like now to do is turn to the very first page. [24] On the left-hand side, there indications as to what tax [25] years you would like the IRS to consider at the offer

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[1] in compromise. The years are '95 through 2001. In [2] October of 2001, was it your understanding that you had [3] or would have unpaid tax liabilities for each of those [4] years?

[5] A Yes.

[6] Q Now I notice this is dated October 16th of 2001, and [7] your final divorce -- the conclusion of the divorce was [8] December 24th, 2001.

[9] MR. McMAHON: Is this the modification agreement?

[10] MR. TURANCHIK: Yeah, the modification agreement.

[11] Q BY MR. TURANCHIK: Did you make this offer in [12] compromise while the divorce appeal was pending?

[13] MR. McMAHON: To the best of your knowledge.

[14] A I guess so.

[15] Q BY MR. TURANCHIK: Okay. Let me keep you on the third [16] page -- sorry, fourth page of this exhibit. There's a [17] typewritten statement which says: As a result of [18] hardships arising from an unstable marriage and the [19] ensuring divorce proceedings which currently continue, [20] I do not have sufficient assets to satisfy in full the [21] amount of my federal tax liability. [22] In October of 2001, was that a true statement?

[23] A Yes.

[24] Q Let me have you turn to the Form 433A, which is a few [25] pages later; and, in particular, Section 4, which is



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- [1] labeled: Asset & Liability Analysis.  
[2] Do you remember reviewing this particular asset [3] and liability analysis before signing the document?  
[4] A I think so. I don't -- I don't remember specifically [5] going through this.  
[6] Q Okay. Well, let me ask it this way: Does the cash in [7] the bank at \$50 strike you as an accurate number for [8] what cash you had in the bank in October of 2001?  
[9] Let me strike that.  
[10] There are two lines under: Cash & Bank Accounts.  
[11] Do those two numbers combine to about \$17,332,  
[12] comport with your recollection of how much money you  
[13] had in the bank in October of 2001?  
[14] A I honestly don't know. I know I had been putting money  
[15] in to try and make ---  
[16] Q Mm-hm.  
[17] A --- payments. So I ---  
[18] Q Mm-hm.  
[19] A --- you know, and I was dealing with the state at the  
[20] same time. So I, you know, I put everything in to -- I  
[21] honestly don't know what.  
[22] Q Let me ask it differently. Do you think that you had  
[23] more than \$20,000 in the bank in October of 2001?  
[24] A No.  
[25] Q All right. Do you think you had less than that?

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- [1] A Yes.  
[2] Q All right. If I take a look at the next line, under [3] Line 24, the 2000 Dodge Caravan?  
[4] A Yes.  
[5] Q It looks like you are claiming the Caravan was worth  
[6] about \$16,000 and that you owed about \$15,000 on it. [7] Does that comport with your recollection as to what the [8] Dodge Caravan was worth in October 2001?  
[9] A Best of my knowledge, yes.  
[10] Q The next area is a little confusing because it deals  
[11] with the real property. And I see a current fair [12] market value there of 162,500, and I also see an [13] asterisk next to the equity in the asset being zero. [14] And I believe that refers to the next page. So if [15] you'd turn to the next page?  
[16] I see here that you've taken a valuation of the [17] real property and it was for the real property at -- [18] mm. Well, the property that you and your wife had [19] owned in Stoneham, what was the address on that [20] property?  
[21] A 71 Pleasant Street.  
[22] Q Is 73 Pleasant Street the other side of the duplex?  
[23] A Yes.  
[24] Q Okay. Do you know if the \$325,000 that's listed here  
[25] is for both 71 Pleasant Street and 73 Pleasant Street?

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- [1] A Yes.  
[2] Q So it's for both?  
[3] A Yes.  
[4] Q Good. I wanted to make sure that one wasn't valued at  
[5] 325 and 73 was valued ---  
[6] A No, no, no.  
[7] Q --- at 325 and total they were worth 650.  
[8] MR. McMAHON: That'd be a lot of appreciation over [9] the value of the mortgage -- the divorce statement.  
[10] MR. TURANCHIK: All right.  
[11] Q BY MR. TURANCHIK: So I see the valuation at 325. If  
[12] you go down to the mortgage balance as of 8/8/01?  
[13] A Mm-hm.  
[14] Q Does that comport with your recollection of how much  
[15] the mortgage balance was in October 2001?  
[16] A To the best of my knowledge, yes.  
[17] Q All right. And do you know what happened -- let me  
[18] actually go back to the very first page in this [19] exhibit, the offer in compromise. I see that the offer [20] there was 32,500.  
[21] A Yes.  
[22] Q Do you have any idea what the amount of your liability  
[23] was at this time?  
[24] A Not off the top of my head.  
[25] Q Would you say it was over \$200,000 at this time?

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- [1] A I don't think so. I think it was in the 170s, 180s.  
[2] Q Okay.  
[3] A Somewhere in there.  
[4] Q Actually, before I move on to the next -- before I move  
[5] on to the next exhibit, do you know what happened with  
[6] this offer in compromise?  
[7] A It was -- it was turned down.  
[8] Q Do you remember what the basis for that was?  
[9] A No. I ---  
[10] Q It's the best -- as I said, there's no wrong answers in  
[11] this deposition.  
[12] A All I can tell you is that I gave my accountant all the  
[13] information. He was the one who was doing the offer in  
[14] compromise and, you know, he asked me for specific  
[15] information and I provided, as honestly as I could,  
[16] everything that he asked for. How he got to those [17] figures, I don't know.  
[18] Q Before this offer was submitted, did you provide your  
[19] accountant with the notices the IRS gave you regarding  
[20] your outstanding tax liabilities?  
[21] A Yes.  
[22] Q Okay.  
[23] MR. McMAHON: I think it's safe to say that he was  
[24] hoping that the offer would be accepted and instead of  
[25] accepting the offer, the permit sent us you.

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[1] Q BY MR. TURANCHIK: Did your accountant mention anything [2] to you regarding tax liens that arise upon having [3] unpaid tax liabilities?

[4] MR. BURKE: Objection.

[5] MR. McMAHON: Do you understand the question?

[6] THE WITNESS: No.

[7] MR. TURANCHIK: Okay.

[8] Q BY MR. TURANCHIK: When you met with your -- did you [9] meet with your accountant before this offer in [10] compromise was prepared?

[11] A Yes.

[12] Q I figured. I will ask many questions that are very [13] easy.

[14] (Laughter.)

[15] Q After that meeting, did your accountant ever talk to [16] you about tax liens?

[17] A Yes.

[18] Q Has your accountant ever mentioned anything along the [19] lines of secret tax liens?

[20] MR. McMAHON: I'm going to object, based on [21] conversations he had with the accountant as being [22] privileged, but you can go ahead and answer.

[23] A No. Not to the best of my knowledge. That's the first [24] time I've ever heard the term.

[25] Q BY MR. TURANCHIK: Okay.

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[1] (Johansen Deposition Exhibit [2] Ralph-11 marked.)

[3] Q BY MR. TURANCHIK: I show you what's marked as [4] Exhibit 11 and ask you to take a look at it.

[5] (Pause.)

[6] Q And Exhibit 11 is a Form 433A. Would you turn to the [7] second-to-last page of this exhibit?

[8] Do you recognize that signature on this exhibit?

[9] A I believe it's Steve's.

[10] Q And by Steve, who do you mean?

[11] A I'm -- Steve Friedman.

[12] Q All right. And he's your accountant?

[13] A Yes.

[14] Q Was he your accountant before the offer in compromise [15] that we have marked as Exhibit 10?

[16] A Yes.

[17] Q I notice that on Exhibit 11 it's dated August 5th, [18] 2002.

[19] MR. McMAHON: You're talking to the signature on [20] the second-to-last page?

[21] MR. TURANCHIK: The signature to the [22] second-to-last page.

[23] Q BY MR. TURANCHIK: Do you know why this one was [24] completed in August of 2002?

[25] A Are you asking me the time line?

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[1] Q Along those lines. I mean, there was an offer made in [2] March -- sorry, October of '01, and less than a year [3] later I see another Form 433. Do you know if another [4] in compromise was made in August of 2002?

[5] MR. McMAHON: To the best of your knowledge.

[6] A To the best of my knowledge, whatever the first offer [7] was --

[8] Q BY MR. TURANCHIK: Mm-hm.

[9] A -- it was advised that it wasn't acceptable --

[10] Q Mm-hm.

[11] A -- and that we had to up our offer, so I presume this [12] is the second. I don't know.

[13] Q Okay. That's -- that's all I'm asking.

[14] A Yeah. I don't know.

[15] Q Do you have any idea how many offers in compromise [16] you've made to the IRS regarding these outstanding [17] taxes?

[18] A No.

[19] Q Do you think it's more than two?

[20] A I don't know. All I know is that when something was [21] submitted, they'd never get back to us, and then they'd [22] ask for more documents, and I don't know whether that [23] constitutes a read.

[24] Q Mm-hm.

[25] A I don't know.

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[1] Q Fair enough.

[2] MR. TURANCHIK: I've got duplicates here and I'd [3] prefer not to mark them all.

[4] (Johansen Deposition Exhibit [5] Ralph-12 marked.)

[6] Q BY MR. TURANCHIK: I'll show you what's marked as [7] Exhibit 12 and ask you to take a look at it. And I [8] will represent to you that this Exhibit 12 is comprised [9] of two forms, again, a Form 656, an offer in [10] compromise; followed by a Form 433A, a collection [11] information statement for wage earners and [12] self-employed individuals.

[13] Would you please turn to the fourth page of this [14] exhibit? And let me know, is that your signature that [15] appears on that page?

[16] A Yes.

[17] Q And on the page, it also states: As a result of [18] hardships arising from a recent divorce, I do not have [19] sufficient assets to satisfy in full the amount of my [20] federal tax liability.

[21] In March of 2003, was that a true statement?

[22] A Yes.

[23] Q And would you turn to the very last page of this [24] exhibit?

[25] Is that your signature that appears on the bottom



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[1] of the page?  
[2] A Yes.  
[3] Q If you can turn to the very first page of this offer in  
[4] compromise, I see on the right-hand side it states: I [5] offer to  
pay \$45,000.  
[6] I just note that for now.  
[7] MR. TURANCHIK: Let mark this as 13.  
[8] (Johansen Deposition Exhibit [9] Ralph-13 marked.)  
[10] Q BY MR. TURANCHIK: I show you what's marked as  
[11] Exhibit13 and ask you to take a look at it. And if [12] you  
would turn to the very last page of the exhibit, [13] Page 4?  
[14] Is that your signature that appears on the bottom [15] of the  
page?  
[16] A Yes.  
[17] Q See that says March 7th, 2003, and if you turn back to  
[18] Exhibit 12, that's also dated March 7th, 2003?  
[19] A Yes.  
[20] MR. McMAHON: Sorry, it's actually that page.  
[21] THE WITNESS: Yes.  
[22] Q BY MR. TURANCHIK: Do you remember in March of '03  
[23] making two different offers? And the reason I say that [24] is,  
because if you turn to the first page of [25] Exhibit13, the offer  
amount is 48,750 as opposed to

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[1] which is Page 2, under the title: Memorandum, re: [2] Ralph  
Johansen.  
[3] In particular, I'd like to focus on the third full [4] paragraph. It  
states: In order to comply with the [5] terms of this agreement – the  
agreement dated [6] December24th, 2001 – Ralph executed a quit  
claim [7] deed, transferring his interest in the former marital  
[8] home to Marlene. As is preferred for title [9] recordation, the  
deed made out to Marlene reflected the [10] deed in Ralph – in  
Marlene and Ralph, i.e., the new [11] deed transferred the property  
from Marlene and Ralph to [12] Marlene.  
[13] First, do you remember signing such a deed, where [14] it  
was in both your names to Marlene following the [15] December  
24th, 2001, modification?  
[16] A Yes.  
[17] Q Do you know what happened after you signed that, to the  
[18] best of your recollection?  
[19] A To the best of my recollection, I signed, and it was  
[20] notarized and Phyllis sent it to Ed Markowitz.  
[21] Q Mahlowitz?  
[22] A Mahlowitz. I'm sorry. Whoever was Marlene's attorney  
[23] at that time.  
[24] Q Do you know what happened to that deed next?  
[25] MR. BURKE: Objection.

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[1] \$45,000?  
[2] A Mm-hm.  
[3] Q Do you remember making two offers in March of '03?  
[4] MR. McMAHON: To the best of your knowledge.  
[5] A To the best of my knowledge, yes. From what I  
[6] remember, there was – Steve was in consultation with  
[7] whoever the IRS officer was and was told that I'd have [8] to up  
it.  
[9] Q BY MR. TURANCHIK: Okay. Okay.  
[10] A That's to the best of my recollection.  
[11] MR. TURANCHIK: Let's mark this as 14  
[12] (Johansen Deposition Exhibit [13] Ralph-14 marked.)  
[14] Q BY MR. TURANCHIK: Mr.Johansen, I show you what's  
been [15] marked as Exhibit 14 and ask – you can take a look at  
[16] it.  
[17] (Pause.)  
[18] Q It is comprised of a cover letter from Alan Huberman,  
[19] CPA, to Ms.Kelly Diaz at the IRS.  
[20] First, have you seen this exhibit, these [21] documents,  
before?  
[22] A I honestly don't know.  
[23] Q Okay.  
[24] (Pause.)  
[25] Q I'd like you to turn to the third page of this exhibit,

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[1] Q BY MR. TURANCHIK: If you know?  
[2] A I don't know.  
[3] Q Okay. At some point in time did you have to execute a  
[4] second deed?  
[5] A Yes.  
[6] Q And when did that happen?  
[7] A Later in – I don't know the exact date, but it was – [8] it  
was much later.  
[9] Q Do you think it was – do you think it was as late as  
[10] December of 2003?  
[11] A Yes. November, December, someplace in around there.  
[12] Q Okay. And do you know what happened to that deed?  
[13] A No.  
[14] Q Mr.Johansen, let me take you back to Exhibit 10, which  
[15] is the offer in compromise from October 2001.  
[16] When this offer in compromise was submitted, you [17] didn't  
think that you could fully pay your back tax [18] liabilities from your  
assets, right?  
[19] A No.  
[20] Q Did you think that you could fully pay your tax  
[21] liabilities from your future earnings?  
[22] A I'm sorry?  
[23] Q Did you think you could fully pay your back tax  
[24] liability from your future earnings?  
[25] A No.

[1] Q If you were to combine your assets and your future  
 [2] earnings together, do you think those two in [3] combination  
 could fully pay your back taxes?  
 [4] A No.  
 [5] Q If you were to combine your assets, your future  
 [6] earnings and your future pension income stream [7] together,  
 do you think those combined could have paid [8] your back taxes?  
 [9] MR. BURKE: Objection. You can answer.  
 [10] A I don't think so.  
 [11] Q BY MR. TURANCHIK: Why not?  
 [12] A Because the interest and penalties just keep going.  
 [13] I'd have to do a monthly payment plan and with the way  
 [14] the interest and penalties were going, it was just  
 [15] accruing.  
 [16] Q And so even with everything put together in October of  
 [17] 2001, you didn't think there was any way you could pay  
 [18] your back taxes?  
 [19] A No.  
 [20] Q Okay. Focusing on that – keeping on Exhibit 10. If  
 [21] you turn to the very – I'm sorry, the second – [22] third-to-last  
 page, it shows on the left-hand side your [23] income, and on the  
 right-hand side your expenses, and [24] shows about leftover  
 income of about \$500 or so?  
 [25] MR. McMAHON: After subtracting the expenses

[1] listed, you mean?  
 [2] MR. TURANCHIK: Yes, after subtracting the [3] expenses  
 listed.  
 [4] A Yes.  
 [5] Q BY MR. TURANCHIK: And you seem to recall at that time  
 [6] your liability was somewhere in the range of 175-  
 [7] 185-thousand dollars?  
 [8] A I believe so.  
 [9] Q And if you were to use all of your disposal income, did  
 [10] you figure it would take you about more than 20 years [11] to  
 pay off this back tax liability, assuming there were [12] no interest  
 and penalties?  
 [13] A Yes.  
 [14] MR. McMAHON: Nice assumption.  
 [15] Q BY MR. TURANCHIK: Mr. Johansen, I don't have any  
 [16] further questions for you at this time. Your attorney [17] may  
 have some questions for your or Mr. Burke may have [18] some  
 questions for you.  
 [19] MR. McMAHON: I have no questions for my client at  
 [20] this time; however, similar to the stipulations that we [21] put  
 on the record at the deposition of Marlene, I would [22] just like to  
 indicate that we are currently still [23] waiting for a decision from  
 the U.S. District Court as [24] to whether or not Mr. Johansen will  
 be allowed to [25] intervene in this case; therefore, the deposition that

[1] has been conducted thus far today is pursuant to a [2] witness  
 subpoena as part of discovery served by the [3] United States in  
 this case.  
 [4] For purposes of economy and practicality, we are [5] going to  
 allow Marlene Johansen's attorney to ask [6] whatever questions  
 he would like of the witness with [7] the understanding that an  
 objection is noted on the [8] record that if there is any question  
 about any [9] testimony that is elicited today as part of this  
 [10] deposition, that the parties are reserving their right [11] to  
 seek to strike that testimony whereas Mr. Johansen [12] is not  
 currently a party to the case.  
 [13] MR. BURKE: Is that – in light of the fact that [14] since he,  
 Mr. Johansen, is under subpoena today, and [15] under the  
 general rules of conducting a deposition, I [16] am allowed to ask  
 him questions, extensive questions, [17] actually, in his testimony  
 here, irrespective to the [18] fact whether he's allowed to intervene  
 or not.  
 [19] And, Mr. Turanchik, can we have your view on that?  
 [20] MR. TURANCHIK: Yeah, I would agree with [21] Mr. Burke's  
 recitation of that. When a third-party [22] witness is subpoenaed,  
 the parties to the lawsuit are [23] permitted to ask questions of that  
 third-party witness.  
 [24] So while you can have the objection for the [25] record---

[1] MR. McMAHON: The objection is noted.  
 [2] MR. TURANCHIK: Right.  
 [3] MR. McMAHON: We do not need to go into [4] dissertation  
 of the law of subpoenaing witnesses.  
 [5] MR. TURANCHIK: Right.  
 [6] MR. McMAHON: Mr. Burke is going to be allowed to [7] ask  
 questions.  
 [8] MR. TURANCHIK: Right.  
 [9] MR. McMAHON: With objections duly noted.  
 [10] EXAMINATION BY MR. BURKE:  
 [11] Q Good afternoon, sir.  
 [12] My name is Tim Burke and I have been retained by [13] your  
 ex-wife, Marlene, to represent her in the United [14] States District  
 Court relative to actions that request [15] that the government  
 release any claims that it alleges [16] it has to your former marital  
 residence.  
 [17] What I'd like to do today is to give you an idea [18] – we've  
 never spoken before – the idea what we're [19] going to do here, is  
 you've testified today. There's a [20] couple of things I think we  
 should clarify for the [21] record. And I have a series of questions,  
 also, that [22] relate to a few things that happened in the divorce.  
 [23] Earlier today I believe you testified, and correct [24] me if I'm  
 wrong, that in response to one of [25] Mr. Turanchik's questions,  
 you indicated that your wife

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[1] had established some credit card debts, one of those [2] debts being something called QVC; is that true?  
[3] A Yes.  
[4] Q And during your divorce proceeding before the Court, [5] did you request from the Court that you receive credit [6] for those credit card debts which you alleged you paid?  
[7] A I'm sorry?  
[8] Q Let me rephrase it.  
[9] At some point, sir, you had a trial for your [10] divorce ---  
[11] A Yes.  
[12] Q --- is that true?  
[13] And do you have any recollection of your wife's - [14] excuse me, of your attorney requesting that the Court [15] consider that your wife had incurred credit card debts [16] that you had paid?  
[17] A I ---  
[18] MR. McMAHON: Do you understand the question?  
[19] THE WITNESS: No.  
[20] Q BY MR. BURKE: Let me try - I'll try another way.  
[21] You - during the divorce, did you maintain that [22] your wife had incurred some credit card debts, which [23] you paid?  
[24] A Yes.  
[25] Q And did you bring that before the Court in your

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[1] A No.  
[2] Q Thank you. Sir, how long did you pay the mortgage on [3] your former marital residence after you left the home? [4] For how long did you pay it?  
[5] A I never paid it.  
[6] Q Well, did you - how did - how did the mortgage get [7] paid?  
[8] A Deducted it from the joint account.  
[9] Q And how did the funds get into the joint account?  
[10] A I gave Marlene money for the household bills.  
[11] Q And did you continue to do that after you moved out of [12] the home in 1997?  
[13] A Yes.  
[14] Q Why did you do that  
[15] A Didn't want to leave her destitute.  
[16] Q At any point in time did the Court order you to [17] continue those payments?  
[18] A I don't know that I was asked to continue those [19] payments. They came down with a figure of \$515 a week.  
[20] I don't remember when that actually took place.  
[21] Q But did you feel it was in your best interest to [22] continue with the payments on the mortgage?  
[23] A Marlene was not working. I did not want to leave her [24] destitute. I ---  
[25] Q Was it in your best interest to keep the house, too?

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[1] position?  
[2] A Yes. I believe so. I ---  
[3] Q And in the Court's ruling, did the Court accept your [4] position?  
[5] MR. McMAHON: Objection to the term, accept.  
[6] MR. BURKE: Could we go off the record here for a [7] second?  
[8] (Off the record at 12:02 p.m. to 12:07 p.m.)  
[9] Q BY MR. BURKE: Sir, do you have any recollection, and I [10] can call your attention to Exhibit No. 7, Page No. 7.  
[11] And on Page No. 7, about a third of the way down [12] there's ---  
[13] A I'm sorry.  
[14] Q On Page No. 7 or marked No. 7, toward the bottom of the [15] page there is a bolded comment: Conclusions of law. [16] If you go one paragraph above that, the paragraph [17] starts with: Given.  
[18] The paragraph above that says: Although the [19] husbands seeks additional credits for the consumer debt [20] of the wife, which he has paid down, the Court is not [21] inclined to grant this credit.  
[22] Do you have any recollection of the Court ruling [23] that, sir?  
[24] A To be honest, no.  
[25] Q Did you ever appeal that ruling?

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[1] MR. McMAHON: Objection. You can answer.  
[2] A I didn't think of it that way.  
[3] Q BY MR. BURKE: Okay. A few minutes ago, sir, [4] Mr. Turanchik asked you some questions on a series of [5] financial statements that you filed. There is an [6] Exhibit No. 10, there is an Exhibit No. 11, and there [7] is an Exhibit No. 12. If you could review those [8] statements and if you could locate for me any notation [9] on those statements of the value of the pension that [10] you have with the Canadian Government, if you could [11] find that for us and point it out to us, I'd be [12] appreciative.  
[13] A Exhibit 10, 11 and what?  
[14] Q 10, 11 and 12.  
[15] A And 12?  
[16] A I don't have 12, I don't think.  
[17] (Pause.)  
[18] THE WITNESS: Do you have 12?  
[19] MR. McMAHON: Yeah, I have them here.  
[20] Do you want to go off of my copies?  
[21] Are you referring to - Exhibits 10, 11 and 12 are [22] each multiple page documents. Can you be more specific [23] as to what you're directing his attention to?  
[24] MR. BURKE: I could. I don't want to entirely [25] direct his testimony.

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[1] MR. McMAHON: I'm not going to have him sit here [2] and review. I mean, we're looking at, what, 15 pages [3] of documents that have been culled together by his [4] accountant over -- I mean, I don't know what period, [5] but there's a lot of information in these documents. I [6] don't expect that Mr. Johansen has memorized these and [7] I'm concerned about boxing him into an answer without [8] adequate time to review all of the information [9] contained in these documents. So ---

[10] MR. BURKE: Well, in two regards. I personally [11] having reviewed these see no reflection anywhere of a [12] Canadian Government pension. I don't intend to box [13] your client in, so I'm more than willing to spend as [14] much time as he requires to review these documents. [15] And if my review of these documents is in error and [16] there is a notation here for the Canadian pension, I [17] would like to be informed of that today.

[18] MR. McMAHON: Well, I think the documents speak [19] for themselves; and if you were unable to see anything [20] reflected in there, then that very well may be the [21] case, but he is here to answer questions, and I don't [22] want to get into a match about this. But, I mean, if [23] you have a specific question about something on the [24] document, I would ask that you direct his attention to [25] it and ask him the appropriate question.

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[1] I don't think it's appropriate that he be given a [2] stack of documents and say, you know, give me your [3] characterization of these documents. He hired a [4] professional accountant to assist him with the offer in [5] compromise, specifically, because he did not have the [6] tax expertise that was necessary and is necessary to [7] file an offer in compromise. And I assumed that he [8] expected that the accountant who is retained and [9] performed that service did it adequately and according [10] to the rules of the IRS.

[11] MR. BURKE: The question still stands, unless you [12] instruct your client not to answer the question.

[13] MR. McMAHON: There is no question. What is the [14] question?

[15] MR. BURKE: I am going to ask your -- I will reask [16] your client.

[17] Q BY MR. BURKE: Sir, I'll ask you to review Exhibits 10, [18] 11 and 12, and if you could tell us if there's any [19] notation on any of the pages included in those exhibits [20] as to the value of the Canadian pension or any [21] indication whatsoever of the existence of the Canadian [22] pension?

[23] MR. McMAHON: Do you understand his question?

[24] THE WITNESS: He's asking if ---

[25] A My understanding is you're asking if there's a line

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[1] item on here that says ---

[2] Q BY MR. BURKE: Canadian pension and a value next to it.

[3] A Yeah.

[4] (Pause.)

[5] MR. McMAHON: Again, to the best of your [6] knowledge.

[7] A To the best of my knowledge, no.

[8] MR. BURKE: I'd like to have this marked as an [9] exhibit. Mine aren't quite that long. Thank you, sir.

[10] Just keep the same order?

[11] MR. McMAHON: Yes.

[12] MR. BURKE: 14.

[13] MR. McMAHON: I think 15, actually.

[14] (Johansen Deposition Exhibit [15] Ralph-15 marked.)

[16] Q BY MR. BURKE: Sir, earlier today Exhibit No. 6 was

[17] introduced, and that was the judgment of the Probate

[18] Court, and that was entered on the face of the document

[19] on March 21, 2001. Have you ever seen the document

[20] which we have just marked as Exhibit No. 15, which is [21] the

Order of the Commonwealth of Massachusetts Appeals [22] Court, dated June 7th, 2001?

[23] A Not that I know of. And to the best of my [24] recollection, no.

[25] Q At any point in time did you ever develop the knowledge

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[1] that your former wife, Marlene, had filed an appeal of [2] your divorce judgment?

[3] A Yes.

[4] Q And at any point in time did you develop some knowledge

[5] that the Court had placed a stay on certain terms of [6] that divorce judgment?

[7] A I'm sure that my lawyer would have advised me.

[8] Q On the divorce judgment, which is Exhibit 6, and in [9] Paragraph No. 9 in Exhibit 6, it orders you to cause to [10] be prepared a qualified domestic relations order. Did [11] you ever do that?

[12] A To the best of my knowledge, no.

[13] Q And do you know why you didn't do that?

[14] A I don't know.

[15] THE WITNESS: Ah ---

[16] MR. McMAHON: Do you need to ask me a question?

[17] (Off the record at 12:15 p.m. to 12:19 p.m.)

[18] Q BY MR. BURKE: Mr. Johansen, at some point during the

[19] year 2000, did you have knowledge that, as part of your

[20] divorce, that your Canadian pension was to be in some

[21] way allocated between you and your wife?

[22] A In 2000?

[23] Q 2001.

[24] A Oh, 2001. Yes, when the divorce nisi, whatever you

[25] call it, came down.

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[1] Q And did you also have knowledge that Marlene, your  
[2] ex-wife, Marlene, had appealed the Probate Court's [3] order  
to the Massachusetts Appeals Court and asked that [4] the house,  
the marital home, not be sold as requested [5] in the court order?  
[6] A Yes, I knew during that year that she appealed it.  
[7] Q And at some point during the year 2001, did you have  
[8] knowledge that the Court had issued an order placing a  
[9] stay on the sale of the marital residence?  
[10] A Is that the appeal?  
[11] Q Yes.  
[12] A Did I know there was an appeal? Yes, I knew there was  
[13] an appeal, if that's your question.  
[14] MR. McMAHON: I think what he's asking you is that [15] as  
part of the appeal, are you aware that there was [16] ever a court  
order, for example, what has been marked [17] as Exhibit 15, that  
stayed the sale of the house which [18] would have paid the taxes?  
Even if you haven't seen [19] it, just read Exhibit 15.  
[20] A I'm sure my lawyer, Phyllis Kolman, advised me that  
[21] there was, you know, an appeal. As to the specific  
[22] paragraphs, I honestly don't know.  
[23] Q BY MR. BURKE: At some point, sir, during the year  
[24] 2001, did you become aware of a complaint for contempt  
[25] that had been filed against you?

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[1] A Yes.  
[2] MR. BURKE: Off the record for just one second.  
[3] (Off the record at 12:20 p.m. to 12:21 p.m.)  
[4] (Johansen Deposition Exhibit [5] Ralph-16 marked.)  
[6] Q BY MR. BURKE: Sir, we just placed in front of you  
[7] Exhibit No. 16. Have you ever seen this document [8] before?  
[9] A To the best of my knowledge I probably did, but I don't  
[10] know for a fact that I saw the exact - I don't [11] remember  
the wording on this front, but I do remember [12] the summons  
and everything.  
[13] Q So you do remember that there was a summons issued  
that [14] required you to be in court on November 26th, 2001?  
[15] A Mm-hm. I don't remember the exact date.  
[16] Q And do you know why your ex-wife was bringing you  
[17] before the Court on a complaint for contempt?  
[18] A Do I know?  
[19] Q Yes.  
[20] A Partly for harassment. Of the three things that are  
[21] listed here, two of them had already been done and she  
[22] knew about it, and yet they were still listed. And the [23] one  
thing that hadn't been finalized at that time was [24] this QDRO.  
But she knew about the other things.  
[25] Q When the complaint for contempt was outstanding, to

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[1] your knowledge at that time, whether any other issues [2] that  
were also outstanding?  
[3] MR. McMAHON: Do you understand the question?  
[4] THE WITNESS: No.  
[5] Q BY MR. BURKE: The complaint for contempt, is it fair  
[6] to say, that related to the issue of the QDRO? Is that [7] true?  
[8] A Yes.  
[9] Q And was there any ongoing issues with the marital home  
[10] at that time?  
[11] MR. McMAHON: In October 2001?  
[12] Q BY MR. BURKE: Approximately October 2001?  
[13] A I don't know. When you're saying issues?  
[14] Q Was the issue of the sale of the marital home on  
[15] appeal?  
[16] A My understanding of things, to the best of my  
[17] recollection, is that the whole divorce findings were [18] being  
appealed by Marlene. If you - I'm not quite - [19] what you're  
asking me to stipulate to here.  
[20] Q I'm not asking you to stipulate to anything. I'm just  
[21] trying to ask for your recollections.  
[22] Did you have any understanding, if the entire [23] divorce was  
on appeal, why you could be brought before [24] the Probate  
Court on a complaint for contempt?  
[25] MR. McMAHON: To the best of your knowledge.

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[1] A I don't.  
[2] MR. BURKE: Mark this as the next one. The [3] complaint  
was 16, this will be 17.  
[4] (Johansen Deposition Exhibit [5] Ralph-17 marked.)  
[6] Q BY MR. BURKE: I've just handed you Exhibit No. 17,  
[7] which you've taken a chance to review. Have you ever [8] seen  
this document before?  
[9] A I honestly don't know. I believe I - Phyllis was very  
[10] good at giving copies of things. To say that I [11] specifically  
remember this individual document, I can't [12] say.  
[13] Q Phyllis Kolman, Phyllis being Phyllis Kolman, your  
[14] attorney?  
[15] A Yes.  
[16] Q And do you believe what is in this memorandum is  
[17] truthful?  
[18] A I've just scanned it, but it looks, looks right. I [19] have no  
idea on these - whatever these things on the [20] arguments are.  
Legalese, I don't.  
[21] (Johansen Deposition Exhibit [22] Ralph-18 marked.)  
[23] Q BY MR. BURKE: And I'll call your attention, sir, we  
[24] may get back to Exhibit No. 17, but I will call your  
[25] attention to Exhibit No. 18, and if you could take a



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[1] look at that, I'd appreciate.  
 [2] (Pause.)  
 [3] Q Have you ever seen this document before, Exhibit  
 [4] No.18, sir?  
 [5] A I most likely did, but I can't say I saw this [6] individual  
 document.  
 [7] Q In July of the year 2001, did you have any  
 [8] understanding that your lawyer was requesting that the  
 [9] Appeals Court not stay the sale of your former marital  
 [10] home?  
 [11] A Would you repeat the question, please?  
 [12] Q I'll try it another way. In July of 2001 ---  
 [13] A Yeah.  
 [14] Q --- did you know or did you understand that your  
 [15] attorney had asked the Appeals Court to reconsider its  
 [16] order wherein it ruled that the stay - there was going [17] to  
 be a stay on the sale of your home, your former [18] marital home  
 in Stoneham?  
 [19] A I know she was appealing it. Yes.  
 [20] Q And did you understand that the home could not be  
 sold?  
 [21] A During the time of the appeal?  
 [22] Q Yes.  
 [23] A I don't know that I was conscious of it, but I would - [24] I  
 placed everything in the hands of my lawyer and [25] whatever  
 she was doing in terms of negotiating.

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[1] Q Sir, at some point did you wind up going to court in  
 [2] December of 2001?  
 [3] A Yes.  
 [4] Q And do you have a knowledge as to why you were there?  
 [5] A For the contempt issue.  
 [6] Q Prior to going to court, had your lawyer made a  
 [7] proposal to Marlene's lawyer to resolve your issues?  
 [8] A My understanding was that she had dialogue with Ed back  
 [9] and forth as to what Marlene actually was looking for [10] and  
 the house was the central issue. My understanding. [11] I don't  
 know.  
 [12] MR. BURKE: Exhibit 19.  
 [13] (Johansen Deposition Exhibit [14] Ralph-19 marked.)  
 [15] Q BY MR. BURKE: I've just place - Steve has actually  
 [16] placed in front of you Exhibit No. 19.  
 [17] (Pause.)  
 [18] A Okay.  
 [19] Q Have you ever seen Exhibit 19 before, sir?  
 [20] A Yes. I believe so.  
 [21] Q Did you see it in December of 2001?  
 [22] A I honestly couldn't tell you when I saw it. I presume  
 [23] so.  
 [24] Q In December of 2001, was your attorney authorized to  
 [25] make this offer?

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[1] A Was she authorized to make this?  
 [2] Q Did she have your permission to write a letter, such as  
 [3] Exhibit No. 19?  
 [4] A I had full faith in my lawyer to do the best she could [5] for  
 me.  
 [6] Q In December of 2000 (sic), sir, is it fair to say - [7] strike  
 that.  
 [8] During the trial of your divorce, did your wife [9] have an expert  
 testify as to the value of your Canadian [10] pension?  
 [11] A Yes.  
 [12] Q And what value did he place on that pension?  
 [13] A I honestly don't know.  
 [14] Q Does the number, say approximately, \$250,000, does  
 that [15] sound about right?  
 [16] A I honestly don't know. If that's what it says in the  
 [17] documents, but I honestly don't remember that.  
 [18] Q In December of 2001, sir, is it fair to say that you [19] had  
 an IRA which was worth approximately \$10,000?  
 [20] A When?  
 [21] Q In December of 2001.  
 [22] A I don't believe so. I had - the IRA, which was worth  
 [23] \$12,000, was split up so that Marlene got half of it, [24] and I  
 believe it was like 12,000 and change. So.  
 [25] Q But it was split. And how much did you hold?

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[1] A I took half of it and she took half of it. They [2] transferred.  
 [3] Q It was less than 10,000?  
 [4] A Yes.  
 [5] Q In the year 2001, did you think you could retire on  
 [6] \$10,000?  
 [7] A No.  
 [8] Q In December of 2001, other than the Canadian pension,  
 [9] did you have anything else to retire on?  
 [10] A I had no other IRAs or anything, if that's what you're  
 [11] asking. I don't know what ---  
 [12] Q Just try to answer the question, sir, and if ---  
 [13] A I'm sorry, I'm not trying to be evasive. I don't quite  
 [14] understand. I guess, no.  
 [15] Q Did you have any investment accounts anywhere?  
 [16] A No.  
 [17] Q In the year 2001, at some point did you expect to  
 [18] retire?  
 [19] A No.  
 [20] Q Not during the year 2001, but at some point in the  
 [21] future?  
 [22] A Some point in the future, yes. I hope so.  
 [23] Q In the year 2001, did you have a belief that you would  
 [24] need a pension to live on once you retired?  
 [25] A Did I believe I needed to have money to exist? Yes.



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[1] Yes.  
 [2] Q Sir, not all these questions are tricky.  
 [3] A I apologize. Yes.  
 [4] Q So lawyers have a bad reputation, sometimes they're  
 [5] relatively simple.  
 [6] A That's what threw me. I'm sorry.  
 [7] MR. McMAHON: Don't worry, if you say something  
 [8] wrong, I'll jump up.  
 [9] Q BY MR. BURKE: Is it fair to say, sir, in the year -  
 [10] excuse me, in December of 2001, that the Canadian  
 [11] pension had a value?  
 [12] A Yes.  
 [13] Q Was that value small to you?  
 [14] A No.  
 [15] Q Is it fair to say that pension had a substantial value [16] to  
 you?  
 [17] A Yes. That's what I was going to live on.  
 [18] Q Sir, in December of 2001, did you have a knowledge or a  
 [19] perception that the two assets in dispute were your [20] home  
 in Stoneham and your Canadian pension?  
 [21] A Yes.  
 [22] Q And in the Court's order, wherein it found facts, it  
 [23] had placed the value on your home of \$325,000 before  
 [24] liabilities. Is that true?  
 [25] A I believe that's the figure.

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[1] Q And you may want to refresh your recollection.  
 [2] A Which document?  
 [3] Q I believe it's on Page 3 of Ralph Exhibit No. 7.  
 [4] A No. ??  
 [5] Q Yes.  
 [6] (Pause.)  
 [7] A Yes.  
 [8] Q And there were some debts on that property, were there  
 [9] not, sir?  
 [10] A Yes.  
 [11] Q And if you move to Page 7 of the Court's order, the  
 [12] paragraph from the prior page continues, and the last  
 [13] sentence of Exhibit No. 7, Page 7, the Court states: [14] The  
 only real asset the parties have, other than the [15] husband's  
 defined benefit pension plan, is the marital [16] home, which has  
 equity of approximately \$172,387.  
 [17] Do you see that, sir?  
 [18] A Yes.  
 [19] Q Do you believe the Court was wrong in saying that, sir?  
 [20] A No.  
 [21] Q That's a fair statement?  
 [22] A Yeah. I think so.  
 [23] Q And if no one objects, if - is it fair to say, sir, if [24] you  
 look at the 172,000 and you divide that by 2, half [25] of 172 is  
 86,000?

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[1] A Yeah.  
 [2] (Laughter.)  
 [3] Q So is it a fair statement, sir, that you believed - [4] you  
 think it's a fair statement that, you know, half [5] the equity in the  
 home was worth about 86,000?  
 [6] A Mm-hm.  
 [7] Q When you went to court in December of 2001, did you  
 [8] understand there were two things on the table, one [9] being  
 the pension, the other being the marital home?  
 [10] A There was another issue on the table, as well.  
 [11] Q And what was that?  
 [12] A In terms of negotiation, she wanted more money.  
 [13] Q Okay. And how did that negotiation for more money work  
 [14] out?  
 [15] A She got an extra \$50 a week.  
 [16] Q But in terms of your assets, there was the home and  
 [17] there was the pension; am I correct?  
 [18] A Yes.  
 [19] Q And earlier in December, and I don't want to  
 [20] characterize another attorney's work, did not your  
 [21] attorney offer to trade the interest Marlene may have [22] in  
 the pension for the equity in the home?  
 [23] MR. TURANCHIK: Objection to form.  
 [24] THE WITNESS: I'm sorry, I don't know what that  
 [25] means.

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[1] MR. TURANCHIK: I'm just objecting to the [2] question, but  
 you can still answer it.  
 [3] MR. McMAHON: Do you understand the question?  
 [4] (Laughter.)  
 [5] THE WITNESS: I don't even know what he said.  
 [6] MR. TURANCHIK: I said, objection to form.  
 [7] MR. McMAHON: To form?  
 [8] MR. TURANCHIK: Right.  
 [9] MR. BURKE: Rarely can I say this, but ignore the  
 [10] government.  
 [11] (Laughter.)  
 [12] MR. TURANCHIK: I'm not instructing you not to  
 [13] answer.  
 [14] MR. BURKE: One of the few advantages of doing a  
 [15] deposition with Mr. Turanchik, he speaks almost as fast [16] as  
 I do.  
 [17] (Laughter.)  
 [18] THE WITNESS: Would you repeat the question?  
 [19] MR. BURKE: I'm going to rephrase the question.  
 [20] Q BY MR. BURKE: Did you understand in December of  
 2000 [21] (sic) that your attorney offered to Marlene's attorney  
 [22] to transfer your interest in the marital home and in  
 [23] exchange Marlene would give up her interest in your  
 [24] Canadian pension?  
 [25] A Yes.

[1] Q You did understand that?

[2] A And when you went to court on December 24th of 2001,

[3] did you ultimately enter into an understanding that was

[4] accepted by the Court that you would trade your [5] interest in the home for Marlene's interest in the [6] Canadian pension?

[7] A Yes.

[8] Q Do you think that was a fair deal?

[9] A Yes.

[10] MR. BURKE: If I may have two more seconds?

[11] MR. TURANCHIK: Yes.

[12] MR. BURKE: Go off the record.

[13] (Off the record at 12:46 p.m. to 12:47 p.m.)

[14] Q BY MR. BURKE: Since December of 2001, sir, have you

[15] remarried?

[16] A Yes.

[17] Q Is Marlene Johansen holding any interest in your formal

[18] marital home on your behalf?

[19] A Not that I know of.

[20] Q Is she acting as your straw, sir?

[21] A No.

[22] Q Is she acting as your nominee?

[23] A No.

[24] Q At any point in time did you and your former wife enter

[25] into any negotiations wherein she would hold your

[1] interest in the former marital home for you?

[2] A Absolutely not.

[3] Q Any point in time did you and your former wife enter

[4] into negotiations whereas the exchange or the trade [5] which happened on December 17th, 2000 – excuse me, [6] strike that – December 24, 2001, was done as a way of [7] beating the federal taxes?

[8] A No.

[9] Q Sir, in December of 2001, when you exchanged the home,

[10] your interest in the home for the pension interest, do [11] you consider it a deal for adequate and fair [12] consideration?

[13] A Yes.

[14] Q There was no ulterior motive, sir?

[15] A No.

[16] Q If you didn't make the exchange, sir, isn't it true [17] that the case could have taken a lot longer?

[18] A Yes.

[19] Q If you didn't make the exchange, sir, isn't it true you

[20] could have come out with a worse result?

[21] A Yes.

[22] MR. McMAHON: It would have been a violation of [23] the Probate Court order.

[24] MR. BURKE: I have no further questions.

[25] MR. TURANCHIK: Mr. Johansen, I have just a few

[1] follow-up questions. [2] EXAMINATION BY MR. TURANCHIK:

[3] Q Did Marlene have an interest in your pension fund

[4] because she was your wife?

[5] A Yes.

[6] MR. McMAHON: Objection.

[7] MR. TURANCHIK: Well, no, allow me to rephrase [8] that.

[9] Q BY MR. TURANCHIK: Was it your understanding that

[10] during your marriage Marlene had an interest in your

[11] pension fund because she was your wife?

[12] A She was my beneficiary.

[13] Q Did you ever negotiate with her for her to become your

[14] beneficiary?

[15] A No.

[16] Q Did you ever have a discussion with her that I'm

[17] thinking about making my brother a beneficiary instead [18] of you?

[19] MR. McMAHON: Objection. You're asking questions

[20] regarding private conversations between a married

[21] couple during the marriage, which is disqualified under

[22] Massachusetts law.

[23] MR. TURANCHIK: Except those marital privileges [24] don't apply in tax cases.

[25] MR. McMAHON: I would read the Mass. statute,

[1] actually.

[2] MR. TURANCHIK: I think I can rephrase the [3] question to keep it from being objectionable.

[4] Q BY MR. TURANCHIK: Did Marlene obtain an interest in

[5] your pension fund because of a contract that you had

[6] entered into with her?

[7] MR. McMAHON: Object.

[8] MR. BURKE: I'll object, but you can answer.

[9] A I was married to her. That's a contract.

[10] Q BY MR. TURANCHIK: But aside from the marriage

[11] contract, there was no separate contract, was there?

[12] A No.

[13] MR. TURANCHIK: I don't have any further [14] questions.

[15] Thank you.

[16] We are concluded with Mr. Johansen's deposition at

[17] 12:52 p.m.

[18] Whereupon, the deposition was concluded at [19] (12:52p)